

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION**

AMAZON.COM, INC. and AMAZON
DATA SERVICES, INC.,

Plaintiffs,

v.

WDC HOLDINGS LLC dba NORTHSTAR
COMMERCIAL PARTNERS; BRIAN
WATSON; STERLING NCP FF, LLC;
MANASSAS NCP FF, LLC; NSIPI
ADMINISTRATIVE MANAGER; NOVA
WPC LLC; WHITE PEAKS CAPITAL LLC;
VILLANOVA TRUST; CASEY
KIRSCHNER; ALLCORE DEVELOPMENT
LLC; FINBRIT HOLDINGS LLC;
CHESHIRE VENTURES LLC; CARLETON
NELSON; JOHN DOES 1-20,

Defendants.

CASE NO. 1:20-CV-484-RDA-TCB

800 HOYT LLC,

Intervening Interpleader
Plaintiff, Intervening
Interpleader Counter-
Defendant,

v.

BRIAN WATSON; WDC HOLDINGS, LLC;
BW HOLDINGS, LLC,

Interpleader Defendants,

and

AMAZON.COM, INC., and AMAZON
DATA SERVICES, INC.,

Interpleader Defendants,
Interpleader Counter-Plaintiffs.

**DECLARATION OF D. MATTHEW DODEN ON BEHALF OF PLAINTIFFS
AMAZON.COM, INC. AND AMAZON DATA SERVICES, INC. AND IN SUPPORT OF
PLAINTIFFS' MOTION FOR LEAVE TO FILE THIRD AMENDED COMPLAINT**

I, D. Matthew Doden, hereby declare as follows:

1. I am an attorney licensed to practice law in the State of Washington. I am Senior Corporate Counsel in the Business Conduct & Ethics team at Amazon.com, Inc., and have been employed by Amazon.com, Inc. since 2019. I am authorized to make this declaration on behalf of Amazon.com, Inc. and Amazon Data Services, Inc. (“Amazon”).

2. I obtained the information recited in this Declaration in my role as counsel for Amazon working along with Amazon’s outside counsel in this matter, Gibson Dunn.

3. I am submitting this Declaration in accordance with the direction from the Court during the April 8, 2022 hearing in this matter. This Declaration addresses when Amazon and/or its outside counsel first obtained key evidence about the new defendants Amazon intends to name in its proposed Third Amended Complaint. It does not include an exhaustive list of all the evidence Amazon has obtained in discovery that is related to the new defendants Amazon intends to name and/or their roles in the kickback and fraud scheme at issue in this action. The Declaration is also intended to reflect a reasonably complete list of the evidence and public source information Amazon obtained about the proposed new defendants in 2020 – 2021, prior to start of document production in this matter.

4. Amazon is not disclosing communications or information protected by the attorney-client privilege, the work product doctrine, the common interest privilege, or any other applicable privilege; on the contrary, Amazon asserts and preserves all applicable privileges.

New Evidence Obtained in Recent Discovery (January – March 2022)

5. Merits discovery involving all Defendants began in this case on November 12, 2021.

6. Starting in January 2022 and continuing through the end of March 2022, Amazon learned of new evidence regarding the role that the proposed new Defendants—Rodney Atherton (“Atherton”), Demetrius Von Lacey (“Von Lacey”), the 2010 Irrevocable Trust, Sigma Regenerative Solutions LLC, CTBSRM LLC (“CTBSRM”), and Renrets LLC (“Renrets”)—played in the kickback and fraud scheme at issue in this action.

7. On or around January 11, 2022, Defendants Carleton Nelson (“Nelson”) and Cheshire Ventures produced 102,206 documents, including an email chain from July 2019, Bates stamped NELSON_CHESHIRE_00865312, in which Atherton explained in connection with the division of profits from a real estate transaction involving Blueridge Group, LLC, “My client’s interest will initially be owned by Allcore Development, LLC, a Wyoming limited liability company. Demetrius Von Lacey is the manager that will sign on behalf of Allcore. I suspect that Allcore may look at selling its interest to a newly formed trust if we can do a 754 election at the partnership level but we can discuss that further as we work through details.” **Ex. 1.**

8. On or about January 26, 2022, nonparty Christian Kirschner produced 1,565 pages in response to discovery requests served by Amazon.¹ These records include:

- a. A November 8, 2018 email exchange between Debra Moore and Christian Kirschner, with the subject line, “Wire Request,” bearing Bates numbers CK00336–CK00337. **Ex. 2.** (Dkt. 618-6). In this email, Christian Kirschner

¹ Counsel for Christian Kirschner provided records to Amazon prior to merits discovery in or around October 2020 but Amazon deleted or quarantined many of these records, and all records preliminarily identified as potentially likely relating to Atherton, before any substantive review out of concern that the production might implicate privileged material. It is my understanding that as of the date of this Declaration, no one at Amazon or Gibson Dunn has substantive knowledge of the contents of those deleted or quarantined records.

directed that \$81,550.00 be transferred from the Villanova Trust to the 2010 Irrevocable Trust and Atherton.

- b. An email exchange starting with an October 11, 2019 email from Samantha Snowdy at Atherton's Ergo Law, LLC, and ending with an October 11, 2019 email from Christian Kirschner to Atherton, with the subject line, "2010 Trust – 2018," bearing Bates numbers CK01298–CK01299. **Ex. 3.** Dkt. 618-7. This document lists transfers of over \$3 million from the Villanova Trust to the 2010 Irrevocable Trust by Atherton, and shows Christian Kirschner seeking advice in connection with those transfers.
- c. A text message exchange starting on September 16, 2018 and ending on February 21, 2020 between Christian Kirschner and Atherton, bearing Bates numbers CK01484–CK01488. **Ex. 4.** (Dkt. 618-8). Atherton wrote to Christian Kirschner on February 4, 2019 that he "want[ed] to help with the stuff you and Casey [Kirschner] are working on and my mind is on overdrive on it," and that he was "on board" but that they would "have to pay fees to AllCore (Carl [Nelson] and Casey [Kirschner])." *Id.* at 1–2. Atherton added, "I definitely want to expand beyond Brian [presumably Defendant Brian Watson]. There are lots of Brians out there," *Id.* at 4. Atherton also wrote: "Von [Lacey] is a quality guy and he has been opening doors in this arena too." *Id.* at 1.
- d. A text message exchange starting on April 12, 2018 and ending on November 24, 2019 between Defendant Casey Kirschner and Christian Kirschner, bearing Bates numbers CK00123–CK00128. **Ex. 5.** Dkt. 618-9. On August 2, 2018, Casey Kirschner asked Christian to "work with Rod to have our shares wired to his

Trust.” Casey Kirschner then wrote that he “just talked to him [presumably Atherton]” and that Atherton “will disperse [the funds] to us from there.” A few days later on August 6, 2018, Casey Kirschner asked Christian Kirschner if Christian had “any update on the wire?” Christian responded that he “[r]eached out to Rod for wiring info. Once I have it I will go to the bank and take care of it. Does this look correct?” Casey Kirschner responded, “That’s Rod’s trust info. He’s wiring it to us from there.” Christian Kirschner then responded, “Ok. Will be \$1.408M.” and a few hours later, Christian Kirschner wrote, “Just spoke to Rod. He has the money. \$1,408,000.” Two months later, on October 2, 2018, Casey Kirschner wrote to Christian Kirschner, “Wire hit today. Please send me what was wired and work with Rod to get our share wired to his trust ASAP.” Christian responded, “\$1.297M. \$432,333 a piece \$864,666 will transfer ASAP.” A month later on November 8, 2018, Christian Kirschner wrote, “Just sent the wire to Rod for \$81,550.00.” And a month after that on December 7, 2018, Christian Kirschner wrote, “Wiring \$707,409 to Rod in about 30 min!”

9. On or about January 26, 2022, third party U.S. Bank produced documents in response to a subpoena served by Amazon. The production included bank statements Bates numbered USBANK-000448, USBANK-000655, USBANK-000942, USBANK-000972, and USBANK-001190. **Ex. 6.** Dkt. 618-11 Some of the bank statements in the U.S. Bank production show wire transfers to Nelson, Cheshire Ventures, and Casey Kirschner from Atherton, the 2010 Irrevocable Trust, CTBSRM, and Sigma Regenerative Solutions:

- a. Document Nos. USBANK-0004448 and USBANK-001190 show that on August 7, 2018, the 2010 Irrevocable Trust wired \$384,640 to a joint bank account of

Carleton Nelson and Amy Nelson (USBANK-0004448), and \$200,152.37 to a joint bank account of Casey Kirschner and Devon Kirschner.

- b. Document USBANK-000655 shows that on December 31, 2019, Sigma Regenerative Solutions wired \$40,000 to the bank account of Cheshire Ventures, LLC, and \$40,000 to a joint bank account of Casey Kirschner and Devon Kirschner.
- c. Document No. USBANK-000655 shows that on December 31, 2019, “Rodney C Atherton” wired \$82,500 to the bank account of Cheshire Ventures, LLC, and \$82,500 to a joint bank account of Casey Kirschner and Devon Kirschner.
- d. Document No. USBANK-000092 shows that on February 26, 2020, CTBSRM wired \$200,000 to a joint bank account of Casey Kirschner and Devon Kirschner.

10. Documents Amazon received in discovery on or around April 1, 2022 demonstrate the ties between Atherton and/or Von Lacey and the 2010 Irrevocable Trust, Sigma Regenerative Solutions, and CTBSRM:

- a. Document No. FIRSTWEST-004439 is a certification of beneficial ownership for the 2010 Irrevocable Trust’s account at First Western Trust Bank, and lists Atherton as the trustee and settlor of the trust. **Ex. 7.**
- b. Document No. FIRSTWEST-004443 is the trust agreement for the 2010 Irrevocable Trust, and also names Atherton as both trustee and settlor (acting in the latter capacity “on behalf of an undisclosed client”). **Ex. 8.**
- c. Document No. FIRSTWEST-004437 is the signature card for the 2010 Irrevocable Trust’s account at First Western, and lists Atherton as the only authorized signatory on the account. **Ex. 9.**

- d. Document No. FIRSTWEST-004578 is a certification of beneficial ownership for Sigma Regenerative Solutions' account at First Western Trust Bank, and lists Von Lacey as the sole member and owner of the company's equity interests. **Ex. 10.**
- e. Document No. FIRSTWEST-004584 is the operating agreement for Sigma Regenerative Solutions, and names Von Lacey as the sole member of the LLC. **Ex. 11.**
- f. Document No. FIRSTWEST-004572 is the signature card for Sigma Regenerative Solutions, and lists Atherton and Von Lacey as authorized signatories on the account. **Ex. 12.**
- g. Document No. FIRSTWEST-004771 is an action by written consent of the shareholders of CTBSRM, signed by its sole shareholder the 2010 Irrevocable Trust, through Atherton acting as trustee, and making Atherton and Von Lacey the sole members of the company's board and making Von Lacey president and Atherton general counsel. **Ex. 13.**
- h. Document No. FIRSTWEST-004766 is the signature card for CTBSRM, and lists Atherton and Von Lacey as authorized signatories on the account. **Ex. 14.**

11. On or about February 7, 2022, Nelson and Cheshire Ventures produced 330 documents, including the document Bates numbered NELSON_CHESHIRE_00872983, which [REDACTED]

[REDACTED]. **Ex. 15.**

- a. [REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

b. [REDACTED]

c. [REDACTED]

d. [REDACTED]

e. [REDACTED]

f. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

12. On March 4, 2022, Nelson waived attorney-client privilege with respect to communications with Atherton, and advised (through separate counsel) that he “intends to assert advice of counsel as a defense in the present action.” As a result, Nelson withdrew privilege claims with respect to certain documents he later produced. **Ex. 16.**

13. On or about March 10, 2022, third party Park National Bank produced records including those bearing Bates stamps PARK-000044 through PARK-000046 and PARK-000400. **Ex. 17, Ex. 18.** Dkts. 618-12 & 618-13. These bank records confirmed that \$300,000.00 was wired from CTBSRM to new Defendant Renrets (PARK000046), and that Nelson’s father-in-law is listed as the sole signatory for the relevant Renrets bank account (PARK-000400).

14. On March 14, 2022, Christian Kirschner, also through counsel, provided Amazon with a signed statement dated May 10, 2020 confirming that he had waived “all aspects of the attorney-client privilege which may have existed up until this time relating to [his] relationship with Rodney Atherton, who represented [Christian Kirschner] in connection with [Christian Kirschner’s] roles as the Trustee of the Villanova Trust and the Trust Protector of the 2010 Irrevocable Trust.” **Ex. 19.** Counsel for Christian Kirschner thereafter produced documents in response to Amazon’s subpoena.

15. On March 21, 2022, Casey Kirschner waived the attorney-client privilege over “communications with Rod Atherton prior to April 1, 2020.” **Ex. 20.** As a result, Kirschner withdrew privilege claims with respect to certain documents, and on March 28, 2022, Casey Kirschner produced certain additional records that further elucidated the roles of Atherton and Von Lacey as knowing and active participants in the kickback scheme, including:

a.

Ex. 21 (CHK000036).²

² Nelson had produced, on or around March 17, 2022, [REDACTED]. **Ex. 33** NELSON_CHESHIRE_00874345; *see also* Dkt. 618-5, 619-2.

[REDACTED]
[REDACTED]
[REDACTED]
b. [REDACTED]
[REDACTED] Ex. 22. Dkt. 618-10, 619-3. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

c. [REDACTED] Ex. 23 (Dkt. 618-
14), [REDACTED]
[REDACTED]

d. [REDACTED]
[REDACTED]
[REDACTED] Ex. 24 (Dkt. 618-15). [REDACTED]
[REDACTED]
[REDACTED]

Evidence Known Prior to Receiving Recent Discovery (pre-January 2022)

16. Amazon learned of the existence of Renrets [REDACTED]
[REDACTED]. Ex. 25 (AMZ-CVL-056308).

17. In or around July 2020, Amazon learned of a forfeiture action relating to a Casey Kirschner property, *United States v. Real Property & Improvements Known as 35 Queensland Lane North, Plymouth, Minnesota 55447*, Case No. 1:20-cv-00613 (E.D. Va.).

The complaint alleges an *in rem* action “seeking the forfeiture of all right, title, and interest in real property and improvements known as 35 Queensland Lane.” The complaint discusses transfers involving First Western Trust Accounts ending in 3698 and 0525. Compl. ¶¶ 16-19. The 3698 account is related to the 2010 Irrevocable Trust, although it was not identified as such in the Complaint. **Ex. 26.**

18. Amazon also discovered by or around July 2020 from public source information that Atherton acted as the organizer and signatory for Finbrit, AllCore, and Cheshire Ventures.

19. In or around July 2020, Amazon learned that Atherton had been disciplined by Colorado Bar authorities and had been suspended from the practice of law from November 15, 2013 to February 25, 2014, due to violations of five separate Colorado Rules of Professional Conduct in connection with financial transactions relating to the abuse of tax credits for conservation easements, including Colorado Rule of Professional Conduct 8.4(c) (“a lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.”). **Ex. 27.** Dkt. 162-3, Dkt. 162-4.

20. Amazon learned of Sigma Regenerative Solutions LLC and CTBSRM by or around August 2020, when then-counsel for Carleton Nelson alerted Amazon to the existence of ten forfeiture notices involving or relating to one or more of the Defendants and also provided Amazon with a link to the government’s forfeiture database. **Ex. 28.** The government’s forfeiture database indicated that forfeiture notices were issued on May 21, 2020 against five First Western Trust Bank accounts belonging to the 2010 Irrevocable Trust, Ergo Law LLC, Sigma Regenerative Solutions LLC, Allcore Development LLC, and CTBSRM in Denver, Colorado. The forfeiture notices identify the funds seized as being

“from” the various shell entities as well as Demetrius Von Lacey and Rodney Atherton. Also on May 21, 2020, the FBI issued a forfeiture notice indicating the seizure of approximately \$15,000 from a Park National Bank account held by Jim Sterner, Nelson’s father-in-law, and Renrets LLC.

21. In or around October 2020, Amazon received a recording of a conversation between Carleton Nelson and Kyle Ramstetter and a WhatsApp chain between Ramstetter and Nelson. In the recording of the conversation between Nelson and Ramstetter, Nelson states that “Rod’s job is to make us invisible,” and that “we pay Von Lacey to be a straw guy.” A transcript of the recording is attached hereto as **Ex. 29**. In the WhatsApp chain between Carleton Nelson and Kyle Ramstetter, Nelson writes: “You will be hearing from an Atty in Den who will ask for a bank act and routing number.” Dkt. 212-16. A copy of the WhatsApp chain is attached hereto as **Ex. 30**.

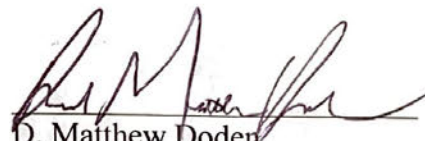
22. In or around March 2021, Amazon learned about a forfeiture claim filed by the government, *United States v. \$4,543.79 in Funds Seized from Bank Account #153568031006 in the Name of Carleton P. Nelson and Amy S. Nelson at U.S. Bank, et al.*, Case No. 1:20-cv-01343 (E.D. Va.). **Ex. 31**. This complaint alleges an “action *in rem* seeking the forfeiture of all right, title, and interest in all defendants in *rem* identified” in the caption. The complaint states that the 2010 Irrevocable Trust “was maintained by Person #7,” which Amazon understood by this time to be Rodney Atherton. *Id.* ¶ 14; *see also Id.* ¶¶ 24, 31-35 (discussing the 2010 Irrevocable Trust). Additionally, the complaint alleged that Person #7 “submitted a ‘Finder’s Fee’ agreement” in connection with the Blueridge transaction and referenced money transfers made by bank accounts under “Person #7’s control” including accounts in the name of the “2010 Irrevocable Trust” and “CTBSRM,”

as well as other unspecified accounts. *Id.* ¶¶ 29-31, 33, 35-36. The complaint states that “Person #7 also transferred” monies from a “CTBSRM” account to an account held in the name of “Renrets LLC.” *Id.* ¶ 36.

23. In or around March 2021, Amazon learned about another forfeiture claim filed by the government, *United States v. \$800,000 Seized from Wells Fargo Account Ending in 5799*, Case No. 1:21-cv-00205 (E.D. Va.). **Ex. 32.** This complaint alleges an “action in *rem* seeking the forfeiture of all right, title, and interest in the defendant in *rem* identified in the case caption above.” This complaint references the 2010 Irrevocable Trust, and the fact that it “was maintained by Person #7’s (understood by Amazon as a reference to Atherton). *Id.* ¶ 14. The complaint alleges that Atherton transferred funds that “are entirely traceable to the fraud scheme and conspiracy described in th[e] complaint” from the 2010 Irrevocable Trust to an account in the name of CTBSRM. *Id.* ¶ 35.

I declare under penalty of perjury that the foregoing statements are true and correct to the best of my knowledge, information, and belief.

Executed on April 17, 2022.


D. Matthew Doden,
on behalf of Plaintiff Amazon